

HOUSE OF REPRESENTATIVES
STATE OF UTAH
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LEGISLATURE
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August 13, 2007

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street SW
Room 8 - B201
Washington, D.C. 20554

Re: Promoting Family-Friendly Internet Access (WT Dockets 07-16 & 07-30)

Dear Chairman Martin:

In Utah, we take very seriously the obligation to protect our children. We recognize that the dangers of modern society are multifaceted and include concerns that may impact a child physically, mentally and socially. Over time, based on often tragic experiences, our nation's laws tend to recognize new dangers that children may face. For example, it was not that long ago that new born babies would drive home in the arms of their mothers or children on bicycles were permitted to contend with cars, trucks and other vehicles without a helmet. Thankfully, we have taken steps to ensure the physical safety of our little ones. Along these same lines, we in the State of Utah have sought to recognize and proactively deal with the dangers to children that are posed by unrestrained access to indecent content on the Internet.

In 2005, Utah Governor Jim Huntsman signed into law an effort to address the ravaging effect of indecent online materials on children. The law provided parents and other concerned adults with a valuable tool by requiring Utah Internet Service Providers and other service providers to block pornographic websites *upon a user's request*. To make this feature meaningful, and avoid the problem of providers using varying definitions of "pornography" the law mandated the creation of a list of pornographic websites to which the blocking requirement would be applicable. In crafting the legislation, the resolve of the Utah legislature and the people they represent was clear. Service providers that failed to disable access to pornographic sites on the list, following a user's request, would be subject to felony charges.

Unfortunately, our efforts have been rebuffed in the courts. In November 2006, the U.S. District Court for the District of Utah ruled in favor of the Center for Democracy & Technology and prohibited the enforcement of certain sections of the legislation that established an adult content registry and required ISPs to (1) identify material "harmful to minors" and (2) block registered content to customers upon request. In response to the court, earlier this year, the Utah legislature passed House Bill 5 which repealed these important protections.

Needless to say, the successful court challenge to our efforts is disappointing. We, nevertheless, recognize that government mandates are not the only way to ensure that our children are safe online. We believe that parents, civic leaders and governments must do more to encourage service providers to make voluntary efforts to shield children from harmful online content. It must be clear to providers that there is a real groundswell of support for meaningful voluntary initiatives. That is why we are very excited about the M2Z license application that is pending before the Federal Communications Commission.

Without prodding, M2Z volunteered to create a free nationwide broadband network that will filter out obscene and indecent material at the network level. This private sector effort will be a watershed event for families in Utah and across the country. The filter will provide children with a safe environment to learn and explore online. Doing so on a network level will give parents the peace of mind to know that they will not have to monitor every moment of their child's online experience (especially since the majority of computers sold are laptops). Indeed, M2Z's filter will also provide comfort to those parents that have already taken active steps in this area because the blocking technology does not reside in the computer itself. It is widely known now that software-based blocking solutions can be easily disabled by savvy users.

Yet another reassuring benefit of M2Z's commitment to block indecent content is that there is no fear that these efforts will be summarily rolled back due to litigation. Recognizing the potential for a court challenge to our legislation, we intentionally limited the scope of the law by mandating blocking of websites only when a consumer affirmatively requested such safeguards. However, our limitation did not survive judicial scrutiny. As you recently experienced with the United States Court of Appeals for the Second Circuit, the federal judiciary is highly skeptical of government imposed mandates to provide families with an electronic environment that is safe for children. In light of this high hurdle we all face in achieving our common goal, M2Z's voluntary approach is a responsible course of action as it would not be subject to legal challenge because the commission is not mandating this voluntary action by M2Z. M2Z's voluntary effort has so much appeal because as a licensee M2Z is free to constrain itself to avoid the delivery of indecent content to consumers on its free network. Notably, M2Z's commitment is an ongoing obligation because the company has volunteered to have content filtering as one of its many enforceable public interest license conditions. To the extent you believe, as we do, that protecting kids from indecent online material is in the public interest, we urge you to grant M2Z's license application so children around the nation can be protected while on the Internet.

We hope to make it to D.C. to discuss this with you.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "M. J. Copps", is written over a horizontal line.

cc: FCC Commissioner Michael J. Copps
FCC Commissioner Jonathan S. Adelstein
FCC Commissioner Deborah Taylor Tate
FCC Commissioner Robert M. McDowell